THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.6736 of 2007

Date: 05.04.2007

Between:

Mediboyina Dandaiah.

....Petitioner

And

Divisional Cooperative Officer and another.

....Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.6736 of 2007

O R D E R:

The petitioner was co-opted as a Member of the Managing Committee of the second respondent-Society in December 2005. A complaint was made by some of the Members of the Society, alleging that the petitioner incurred disqualification under Section 21-A of the A.P.Co-operative Societies Act, 1964 (for short 'the Act'), on the ground that he had three living children, as on the date of his being co-opted. The first respondent got the preliminary enquiry of the matter caused, through the Assistant Registrar/Sub-Divisional Co-operative Officer, Kovvur. On the basis of a Report, dated 08.01.2006, received from the Assistant Registrar, the first respondent issued a show cause notice, dated 26.03.2007 requiring the petitioner to explain as to why he shall not be declared to have incurred disqualification to continue as Member. The petitioner challenges the same.

Learned counsel for the petitioner submits that though the deposition of the petitioner was recorded by the Assistant Registrar about one year ago, no reference is made to the same in the show cause notice and that the

petitioner was not furnished with the complaint, that gave raise to the impugned proceedings, or the report submitted by the Assistant Registrar.

Learned Government Pleader for Co-operation, on the other hand, submits that the petitioner can put forward all his contentions in the explanation and the Writ Petition is not maintainable.

A Writ Petition can be entertained against a show cause notice, only in very rare cases, such as, where the proceedings are initiated by an authority not vested with the power. It is not in dispute that the first respondent has the power to take necessary action under Section 22-A of the Act, in case necessary facts exist. On receiving a complaint against the petitioner, the first respondent got the preliminary enquiry caused through the Assistant Registrar. The opinion expressed in the Report cannot be treated as conclusive. The first respondent has to form an opinion about the disqualification of the petitioner, only after he examines the explanation, that may be submitted by the petitioner. Further, the copy of the complaint made against the petitioner and the report submitted by the Assistant Registrar need to be communicated to the petitioner. The interests of the petitioner can be protected, by directing that in case, any order adverse to his interests is passed, the same shall not be given effect

to, for a reasonable period, enabling him to work out his remedies.

For the forgoing reasons, the Writ Petition is disposed of, directing that the first respondent shall furnish a copy of the complaint, dated 16.02.2006, filed against the petitioner and a copy of the Report of the Assistant Registrar, Kovvur, dated 08.01.2007, together with the enclosures, within one (1) week from today. The petitioner shall be entitled to submit his explanation, within ten (10) days thereafter. In case, the first respondent passes an order disqualifying the petitioner, the said order shall remain in abeyance for a period of two (2) weeks from the date of communication of the same to the petitioner. There shall be no order as to costs.

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05.04.2007

Note: Issue C.C. in three days.

(B/o)

JSU